United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1902.

146

No. 1187.

No. 4, SPECIAL CALENDAR.

ALLAN L. McDERMOTT, RECEIVER, APPELLANT,

vs.

HARRISON CROOK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 1, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1902.

No. 1187.

No. 4, SPECIAL CALENDAR.

ALLAN L. McDERMOTT, RECEIVER, APPELLANT,

vs.

HARRISON CROOK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 14, 1902.

In the Court of Appeals of the District of Columbia.

ALLAN L. McDERMOTT, Receiver, Appellant,
vs.
HARRISON CROOK. } No. 1187.

a Supreme Court of the District of Columbia.

HARRISON CROOK
vs.
THE CITY AND SUBURBAN RAILWAY OF Washington, a Corporation, and Allan L. McDermott, Receiver of the City and Suburban Railway of Washington. } No. 44990. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed October 19, 1901.

In the Supreme Court of the District of Columbia.

HARRISON CROOK
vs.
THE CITY AND SUBURBAN RAILWAY OF Washington, a Corporation, and Allan L. McDermott, Receiver of the City and Suburban Railway of Washington. } No. 44990. Law.

The plaintiff, Harrison Crook, sues the defendants, The City and Suburban Railway of Washington, in the District of Columbia, a corporation incorporated under an act of Congress and having an office and agents and doing business in the District of Columbia, and Allan L. McDermott, who was heretofore, to wit, on the 11th day of October, A. D. 1901, in a certain cause pending in this court and known as equity cause No. 22663, entitled United States Mortgage and Trust Company, United States Electric Lighting Company, Anacostia and Potomac Railroad Company, and Columbia Railway Company *vs.* City and Suburban Railway Company of

Washington, duly appointed and has since qualified as receiver of the City and Suburban Railway of Washington, for that, heretofore to wit, on the 13th day of June, A. D. 1901, and prior thereto, the said defendant, The City and Suburban Railway of Washington, was a common carrier of passengers for hire, whose cars were propelled by electricity from and along certain lines of railway owned and operated by it, among others, points between the city of Washington, in the District of Columbia, to the town of Berwyn, in the State of Maryland; the plaintiff avers that
2 on, to wit, the 13th day of June, A. D. 1901, at or about 2 o'clock p. m., with another person he was driving a vehicle, known as a buggy, drawn by one horse, across the tracks of the said City and Suburban Railway of Washington, at or near a point where Brentwood road crosses the tracks of the said company in the town of North Langdon, in the District of Columbia, more commonly known as King's crossing, as he might lawfully do, and was using due care and diligence on his part, and the said City and Suburban Railway of Washington, the defendant, by its agents, servants, and employés, was then and there managing, controlling, and running certain cars propelled by electricity on, upon, and over said crossing, known as King's crossing, in the town of North Langdon, in the District of Columbia; that it was the duty of the defendant The City and Suburban Railway of Washington to propel its cars with ordinary care, skill, and diligence, but the said defendant, The City and Suburban Railway of Washington, unmindful of its duty in the premises, then and there, by its agents, servants, and employés, did carelessly, negligently, and improperly manage, control, operate, and propel one of said cars over said crossing, and that by and through the carelessness, negligence, and improper conduct of the said defendant, The City and Suburban Railway of Washington, its agents, servants, and employés, the said car then and there, without any fault or negligence on the part of the plaintiff, while on or near said track, at said point, ran into, against, and upon the said vehicle and the said horse, thereby greatly damaging the same, and whereby and in consequence of such neglect and careless conduct on the part of the defendants, its servants and agents, the plaintiff was thrown violently to the ground
3 and his ribs broken, his legs injured, and his body much cut and bruised, and the said plaintiff was then and there otherwise greatly bruised, wounded, and injured; and also, by reason of the premises, the plaintiff became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, from thence hitherto, during all of which time said plaintiff suffered and underwent great pain and was hindered and prevented from transacting his necessary and lawful affairs by him during all of that time to be performed and transacted, and lost and was deprived of divers great gains, profits, and advantages which he might and would have otherwise derived and acquired, and whereby also the plaintiff was obliged and did then and there pay, lay out, and expend divers sums of money in and about en-

deavoring to be cured of the said bruises and injuries so received, as aforesaid, and also thereby the plaintiff's health has been otherwise permanently injured and impaired, to the damage of the plaintiff in the sum of $10,000.

Wherefore the plaintiff brings this suit and claims said sum of $10,000, besides the costs of this suit.

BRANDENBURG & BRANDENBURG,
Attorneys for Plaintiff.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

BRANDENBURG & BRANDENBURG,
Attorneys for Plaintiff.

Endorsed: Leave to file granted. A. C. Bradley, justice. Oct. 19, 1901.

4 *Demurrer, &c.*

Filed November 30, 1901.

In the Supreme Court of the District of Columbia.

HARRISON CROOK, Plaintiff,
vs.
THE CITY AND SUBURBAN RAILWAY OF Washington *et al.*, Defendant-. } No. 44990. At Law.

The defendant Allan L. McDermott, receiver, says that the declaration is bad in substance.

J. J. DARLINGTON,
Attorney for Defendant.

One of the matters of law to be argued at the hearing of this demurrer is that the defendant Allan L. McDermott at the time of the happening of the accident set forth in the declaration was not receiver of the defendant The City and Suburban Railway of Washington, nor was the said The City and Suburban Railway of Washington in the hands of any receiver.

J. J. DARLINGTON,
Attorney for Defendant.

Notice.

Messrs. Brandenburg & Brandenburg, attorneys for plaintiff:

Please take notice that the above demurrer will be called to the attention of circuit court No. 1, Mr. Chief Justice Bingham
5 presiding, on Friday, the 6th day of December, A. D. 1901, at ten o'clock a. m., or so soon thereafter as counsel can be heard, for its action.

J. J. DARLINGTON,
Attorney for Defendant.

Order Overruling Demurrer.

Supreme Court of the District of Columbia.

TUESDAY, *December* 24, 1901.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

HARRISON CROOK, Plaintiff,
vs.
CITY & SUBURBAN RAILWAY OF WASHINGTON and Allan L. McDermott, Receiver of the City & Suburban Railway of Washington, Defendants. } At Law. No. 44990.

Upon hearing the demurrer of Allan L. McDermott to the declaration it is considered that said demurrer be, and hereby is, overruled.

The defendant notes an exception to the ruling of the court.

6 *Order Allowing Special Appeal.*

Filed January 11, 1902.

Court of Appeals of the District of Columbia.

No. 109, Original Docket, January Term, 1902.

ALLAN L. MCDERMOTT, Receiver, Petitioner,
vs.
HARRISON CROOK. } Law. No. 44990.

On consideration of the petition of Allan L. McDermott, receiver, for the allowance of a special appeal from an order of the supreme court of the District of Columbia, entered herein on the 24th day of December, A. D. 1901, it is now here ordered by the court that said appeal be, and the same is hereby, allowed.

By the court:

R. H. ALVEY,
Chief Justice.

January 10, 1902.

A true copy.
Test:
[SEAL.] ROBERT WILLETT, *Clerk.*

7 *Order for Transcript.*

Filed January 20, 1902.

In the Supreme Court of the District of Columbia, the 20th Day of January, 1902.

HARRISON CROOK
vs.
THE CITY AND SUBURBAN R'Y OF WASHINGTON *et al.* } At Law. No. 44990.

The clerk of said court will kindly make a transcript on appeal (special) of the following:

Declaration.
Demurrer.
Order of court overruling demurrer.
Exception of defendant and order allowing special appeal.

J. J. DARLINGTON,
R. B. BEHREND,
Attorneys for Defendant.

Memorandum.

January 23, 1902.—Appeal bond filed.

8 UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 7, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 44990, at law, wherein Harrison Crook is plaintiff and The City and Suburban Railway of Washington, a corporation, *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 5th day of February, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1187. Allan L. McDermott, receiver, appellant, *vs.* Harrison Crook. Court of Appeals, District of Columbia. Filed Mar. 1, 1902. Robert Willett, clerk.

In the Court of Appeals of the District of Columbia.

APRIL TERM, 1902.

No. 1187.

No. 4, Special Calendar.

ALLAN L. MCDERMOTT, Receiver, *Appellant*,
vs.
HARRISON CROOK.

Brief for Appellant.

J. J. DARLINGTON,
R. B. BEHREND,
Attorneys for Appellant.

In the Court of Appeals of the District of Columbia.

April Term, 1902.

No. 1187.

No. 4, Special Calendar.

Allan L. McDermott, Receiver, *Appellant*,
vs.
Harrison Crook.

Brief for Appellant.

The action in this case was a suit for personal injuries against the City and Suburban Railway of Washington, a corporation, and Allan L. McDermott, its receiver. The accident out of which the action arose occurred on the 13th day of June, A. D. 1901, when the management, operation and control of its railway was in the hands of the railway company. On the 11th day of October, A. D. 1901, the appellant Allan L. McDermott was appointed receiver in a foreclosure suit at the instance of the holders of the mortgage bonds of the railway company. The receiver demurred on the ground that, at the time of the happening of the accident, he was not receiver, and that, at that time, the railway company was not in the hands of any receiver. The court below overruled this demurrer, from which action the present special appeal was allowed by this Court.

The present suit is one of a number of actions for per-

sonal injuries brought against the railway company and the receiver, jointly, for injuries arising out of alleged negligence upon the part of the company prior to the receiver's appointment, the other suits, by stipulation, being allowed to await the decision of this Court upon the present appeal.

Points on Authorities.

It is difficult to see upon what theory the receiver can be held subject to the annoyance and expense of being made a party defendant under the circumstances of this case, while the objections to such procedure are apparent.

The negligence upon which the action is based, if it existed at all, was the negligence of the railway company itself, while itself in the control and operation of its lines, which negligence there is no possible ground or reason for imputing to the receiver.

In addition, the very appointment of a receiver of an insolvent railway company at the instance of the bondholders in a foreclosure proceeding, is to preserve its assets for meeting the paramount lien to which the mortgage bonds are entitled. Upon what ground it can be required that these assets, in the hands of a receiver, can be subjected to depletion in the defense of actions which in no way concern the bondholders or the receiver, and which, however, they may result, can create no judgment lien upon those assets, was not disclosed by the learned court below in overruling the appellant's demurrer, nor, is it believed, can any tangible or practical reason be assigned for such a theory.

The only authorities cited below in opposition to the demurrer were Pickersgill *vs.* Myers *et al.*, 99 Pa. St., 602, and Combs *vs.* Smith, 78 Mo., 32.

In the Pennsylvania case, the corporation had been dissolved, and the receiver appointed to wind up its affairs;

and, therefore, there was no one who could be sued except that officer. He was in charge of its assets, not, as in the present instance, merely for the purpose of preserving them for the benefit of the holders of a paramount claim, but for the purpose of realizing and distributing them among all parties in interest.

Of the Missouri case, the New York Court of Appeals, in Decker *vs.* Gardiner, 124 N. Y., 334, says: "While the facts in reference to the appointment of a receiver are not stated, enough appears in the opinion of the court to indicate that the defendant was a statutory receiver. In that view, the case is in harmony with the general current of authorities, but if the facts were otherwise it would not have our approval." And, in reference to the case before it, the court continues: "The defendant in this case was appointed by the circuit court in pursuance of its powers as a court of chancery. * * * He did not represent the corporation or supersede it in the exercise of its powers, except in relation to the possession and management of the property committed to his charge. * * * The corporation was clothed with its franchise and still existed. * * * It could sue and be sued, and was liable for its acts and upon its contracts and covenants the same as if the receiver had not been appointed. With the particular cause of action set out in the complaint the defendant had no connection, and it could in no possible way be charged upon the property in the receiver's possession. (Met. Trust Co. *v.* Tonawanda R. R. Co., 103 N. Y., 245; Raht *v.* Attrill, 106 Id., 423.) For it, the corporation was alone liable, and there was no legal obstacle to an action against it, and a judgment, if recovered, was collectible out of its available assets. It follows from these views that the defendant was not a proper party to the suit, and that the action was not maintainble against him."

The court adds: "The question under discussion was substantially decided in Arnold *v.* Suffolk Bank, (27 Barb., 424), and it was there held, * * * that the mere fact that A is the receiver of B, whether they be natural or artificial persons, will not justify a creditor of B in bringing A as a party into every suit against B, when the rights and remedies of the plaintiff end with B."

In Finance Co. *v.* Charleston R. R. Co., 46 F. R., 508, the question was also presented, and the court in like manner held that an action for personal injuries sustained before the receiver's appointment could not be maintained against him, but must be brought against the company. The court said: "There can be no doubt that a receiver is responsible for personal injuries suffered through the negligence of his employés during his receivership. (*Ex parte* Brown, 15 S. C., 523.) It is equally clear that neither he nor the funds in his hands arising from the earnings of the road under him can be held responsible for wrongs committed before any receiver was appointed. (Davenport *v.* Railroad Co., 2 Woods, 519; *Ex parte* Brown, *supra.*)

"As the court in this last case says: 'The receivership is the transfer of the property to a new owner, who begins his work, cut off from the past, with new duties and new obligations.' (15 S. C., 533.) The proper course for the petitioner is to bring the action against the company. * * * He cannot have the sanction of the court for a suit against the receiver upon a cause of action for which, as such, the receiver cannot be responsible."

So, in Hiles *et al. v.* Case, 9 Biss., 549, reported also in 4 F. R. at page 873, under the title *In Re* Dexterville Mfg. & Boom Co. *v.* Case, it was held that an action could not be maintained against a receiver for fires, destroying timber, etc., along the line of the road, four months before the receiver was appointed.

See, also, Hopkins *v.* Connell *et al.*, 2 Tenn. Ch., 323.

It is respectfully submitted, both upon the authority of the foregoing citations, and upon the reasons upon which they rest, that the demurrer should have been sustained, and both the receiver and the funds in his hands relieved from the expense and burden of defending suits which, should they result in judgments in favor of the plaintiffs, can affect neither him nor them.

Respectfully submitted,

J. J. DARLINGTON,
R. B. BEHREND,
Attorneys for Appellant.

IN THE

Court of Appeals of the District of Columbia.

APRIL TERM, 1902.

ALLEN L. McDERMOTT,
Receiver, *Appellant*,
v.
HARRISON CROOK,
Appellee.

No. 1187.
No. 4 Special Calendar.

Brief for Appellee.

CLARENCE A. BRANDENBURG,
EDWIN C. BRANDENBURG,
F. WALTER BRANDENBURG,
Attorneys for Appellee.

McQUEEN, PR.

IN THE

Court of Appeals of the District of Columbia

April Term, 1902.

ALLEN L. MCDERMOTT, Receiver, Appellant,
v.
HARRISON CROOK, Appellee.

No. 1187.
No. 4 Special Calendar.

BRIEF FOR APPELLEE.

Statement.

On the 13th day of June, 1901, the appellee, while crossing the tracks of The City and Suburban Railway Company in North Langdon, D. C., was seriously injured by a car of the above company. On the 11th day of October, following in a certain cause pending on the equity side of the Supreme Court of the District of Columbia, Allen L. McDermott was appointed and subsequently qualified as receiver of said railroad company. Thereafter, suit was instituted against the company and its receiver for the purpose of recovering the sum of $10,000 as damages for the injuries hereinbefore referred to. A demurrer was filed below on behalf of the receiver upon the ground that he was not a proper party to an action growing out of injuries prior to his appointment, but leave having been granted the plaintiff to make the receiver a party to the suit, Mr. Chief Justice Bingham overruled the demurrer. The present appeal is prosecuted from that decision.

Argument.

In the consideration of this case, it must be remembered that before the institution of this suit below the authority of the Equity Court appointing the receiver was first obtained. Furthermore, the suit is not against the receiver alone, but against the receiver as well as against the company. It should also be remembered in this connection that the liability of a receiver for the negligence or torts of his servants is in no sense a personal one, but he is only liable in his official capacity as receiver and agent of the court, the proceedings being analogous to proceedings *in rem* and binding the property or estate rather than the person of the receiver (High on Receivers, 3d ed., p. 400, § 397; McNulta *v.* Lockridge, 141 U. S., 327).

The question involved in this case has but infrequently been before the courts, and accordingly there is but little opportunity for discussion. The leading case on this question and which sustains the position of the appellee is that of Combs *v.* Smith (78 Mo., 32). In that case the facts are that in 1868, The North Western Missouri Central R. R. Co., without authority, constructed a portion of their lines over plaintiff's lands; on May 31, 1871, this company conveyed its franchises and rights to the St. Joseph & Iowa Railroad Company, while in the following month the latter conveyed the same to the Burlington and South Western Railway Company. In 1875, the defendant was appointed receiver of the last mentioned road, whereupon suit was instituted against him for damages growing out of the injuries to plaintiff's lands. It was contended on behalf of the defendant that no cause of action was set forth, since the transaction complained of transpired before the receiver took charge of the road. The court, however, held to the contrary, and said :

When a corporation passes into the hands of a receiver, it is taken by him subject to all the debts and liabilities existing against it, at the time of his appointment, whether arising from contract or tort. The court appointing him ascertains and adjusts these debts and liabilities, and orders a distribution of the assets in discharge thereof, according to the law and equity governing them. On application of the claimant, the court entertains and adjusts his rights. It may exercise the discretion of allowing the adjudication of his demands to be made in an independent suit, and this is usually done when the issues can be more conveniently tried in the place where the facts arise and the venue belongs. Before instituting his suit the claimant obtains leave from the court of which the receiver is an officer, to sue him in another tribunal, which was the case here. In respect to the past liabilities of the corporation, it is not contended the receiver can be personally held. Nevertheless he is the representative of the corporation, taking its place in respect to the custody and administration of its estate, and toward its claimants and creditors he occupies a relation somewhat analogous to that of an administrator. The functions of the corporation being suspended as to its former managers, the receiver takes their place and holds and conducts everything in his own name. A suit, therefore, to ascertain and adjust a liability of the company is properly brought against the receiver in his capacity as such, somewhat in the same form as a suit against an administrator by the creditor of the estate of the deceased. The judgment goes against the defendant in his capacity as receiver, and is leviable out of the assets of the company in his hands. Such is the judgment in this case. Upon this judgment the court that granted leave to the plaintiffs to sue will adjudge to him his equitable share in the assets of the company, and order payment according to the equities and priorities of the different claimants on the assets. In the case of Commonwealth *v.* Runk, 26 Pa. St., 235, the Supreme Court of Penn-

> sylvania approved of a proceeding in this form to ascertain and adjudge a legal demand, and ordered a judgment of the description I allude to. We have no knowledge of the condition of the assets of the company of which the defendant is receiver, and we have nothing to do with the enforcement of the plaintiff's demand against said assets. It must be classified and disposed of by the court having custody of the assets, somewhat in the manner of a judgment against an administrator leviable out of the assets of the estate he has charge of.

The case of Commonwealth *v.* Runk *et al.* (26 Pa. St., 235), referred to with approval in the foregoing opinion, was an action of debt brought by the Commonwealth against Runk and others, as receivers and managers of the New Hope & Delaware Bridge Company for the purpose of recovering certain taxes assessed on the capital stock of the company from the year 1841. The defendants were appointed receivers in April, 1851, while suit was brought against them for these taxes in 1854. The court in sustaining the position that suit might properly be brought against the receivers for the taxes although they accrued many years prior to their appointment, among other things, states:

> But the tax is charged against The New Hope and Delaware Bridge Company, and this action to collect it is against the defendant below as receivers of the company under the Act of 12 April, 1851 [Act appointing receiver] under the decree of the Chancellor of New Jersey, and the judgment must be so as to be enforced against the funds that are or ought to be in their hands.

The cases of Combs *v.* Smith and Commonwealth *v.* Runk *et al.*, above referred to, have been cited with approbation on one point or another in nearly every text

book in which the question of receivership or insolvency of corporations has been treated, and in not a single instance has a criticism been found of the principles there laid down.

As indirectly sustaining the position contended for by appellee, is the case of McNulta *v.* Lochridge (141 U. S., 327). In this case it was contended that the receiver was not liable to suit without permission of the Federal Court, under the Act of March 3, 1887, which declares: "That every receiver * * * may be sued in respect of any act or transaction of his in carrying on the business connected with such property without the previous leave of the court in which said receiver or manager was appointed." The Supreme Court of the United States, in agreeing with the court below, said:

> That it was not intended by the word "his" to limit the right to sue to cases where the cause of action arose from the conduct of the receiver himself or his agents; but that with respect to the question of liability he stands in place of the corporation. His position is somewhat analogous to that of a corporation sole, with respect to which it is held by the authorities that actions will lie by and against the actual incumbents of such corporations for causes of action accruing under their predecessors in office.
>
> * * * * * *
>
> Actions against the receiver are in law actions against the receivership, and the funds in the hands of the receiver, and his contracts, misfeasances, negligences and liabilities are official and not personal, and judgments against him as receiver are payable only from the funds in his hands. As the right of the statute to sue for acts and transactions of the receivership is unlimited, we can not say that it should be restricted to causes of action arising from the conduct of the receiver against whom the suit is brought, or his agents.

The Supreme Court would thus seem to have clearly intimated that an action might be brought against a receiver for causes arising prior to *his* appointment, which might be equally as well while the road was being operated by the company as where he succeeds a prior receiver.

Wait on Insolvency, p. 149, § 241, lays down the broad proposition that "an action may be maintained against the receiver for a tort committed by the corporation prior to his appointment, and judgment, if recovered, will be collectable out of the assets in his hands."

In the third edition of High on Receivers, p. 402, § 398 (*a*) the following rule is laid down:

> An action may be maintained against the receiver, by leave of court, to recover damages sustained by plaintiff by the construction of the railway through his premises without making compensation therefor, prior to the receiver's appointment, the judgment when recovered to be satisfied out of the assets in the receiver's hands under the orders of the court appointing him.

The same doctrine is laid down in Beach on Receivers, Alderson's Ed., § 730, p. 377.

In the case of Decker *v.* Sands (124 N. Y., 334), cited by appellant, the receivers were appointed *pendente lite* and the court itself called attention to the fact that such a receiver is a mere temporary officer with limited functions and does not possess the power of a permanent receiver or any legal power, except such as is specially conferred upon him by the court.

The case of the Finance Co. *v.* Charleston R. R. Co. (46 Fed. Rep., 548), is also cited by the appellant as sustaining his contention that the receiver is not a proper party to the suit. This was an application for *leave to sue* the

receiver in an action for injuries sustained prior to his appointment. The opinion is extremely brief and the fact that it cites Davenport *v.* Railroad Co. (2 Woods, 519) and *Ex parte* Brown (15 S. C., 533) as authority for the proposition that a receiver is not a proper party to such a suit is strongly indicative that the question was only indifferently considered, for the two cases cited merely hold that damages for such injuries are not entitled to priority of payment over mortgage bonds, and the question of joining or suing the receiver is not considered. Indeed, in both cases the injuries occurred while the receivers were operating the roads.

In conclusion it is respectfully submitted that the text books as well as the weight of authorities which have considered the question sustain the contention of the appellee that the demurrer was properly overruled, and the decision should, therefore, be affirmed, especially in view of the fact that leave of court was first obtained before the receiver was made a party, and, secondly, because both the railroad company and its receiver are made parties to the action and it is not as though it were restricted to the receiver alone.

Respectfully submitted.

CLARENCE A. BRANDENBURG,
EDWIN C. BRANDENBURG,
F. WALTER BRANDENBURG,
Attorneys for Appellee.